COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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April 18, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: In the Matter of Policy and Rules
Concerning the Interstate, Interexchange
Marketplace, CC Docket 96-61

Dear Secretary Caton:

Enclosed for filing please find an original and 11 copies of the comments of the Pennsylvania Public Utility Commission to Sections IV, V and VI of the Commission's above-referenced Notice of Proposed Rulemaking.

Respectfully submitted,

Alan Kohler
Assistant Counsel

Counsel for the Pennsy
Public Utility Commissi

Enc.

cc: Janice Myles, Common Carrier Bureau (w/diskette)
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of	:	
	:	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	:	CC Docket No. 96-61
	:	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	:	

INITIAL COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION TO THE NOTICE OF PROPOSED RULEMAKING REGARDING INTERSTATE, INTEREXCHANGE SERVICE, SECTIONS IV, V AND VI

I. INTRODUCTION

These comments are submitted on behalf of the Pennsylvania Public Utility Commission (PaPUC) in response to the Commission's Notice of Proposed Rulemaking (NOPR), released March 25, 1996, as captioned above. The NOPR seeks comments on a wide variety of issues pertaining to implementation of the Telecommunications Act of 1996 (1996 Act) pertaining to the domestic long-distance market. The NOPR divides these issues into nine specific sections. In the NOPR, the Commission gives interested parties the opportunity to file two sets of comments -- one set for Sections IV, V and VI, and the other set for the remaining sections of the NOPR. The PaPUC appreciates the opportunity to submit its comments in two separate sets and submits these comments to the issues addressed by the Commission in Sections IV, V, and VI of the NOPR.

II. SUMMARY OF PaPUC's SUBSTANTIVE ARGUMENTS

The PaPUC's substantive arguments pertaining to the Commission's NOPR are addressed specifically for Sections IV, V and VI of the NOPR. As to Section IV, the PaPUC recommends that the Commission reevaluate its traditional view of the relevant product markets and geographic markets established in Competitive Carrier. In both cases, the PaPUC advocates the use of a more common-sense application of federal merger guidelines rather than the "credible evidence" approach suggested by the Commission since a "credible evidence" approach is prejudicial to the interests of state commissions and state consumer advocates' offices. Consistent with the approach recommended by the PaPUC, the PaPUC advocates separation of the relevant product market into three markets: 1) the MTS or residential long-distance product market, 2) the WATS\800 product market and 3) the virtual network-type services market. Similarly, for geographic markets the PaPUC recommends use of either Major Trading Areas, Basic Trading Areas or Metropolitan Statistical Areas.

As to Section V of the NOPR, the PaPUC argues that the Commission should maintain its separation requirements applicable to independent and BOC out-of-region services. Such separation policies have served the Commission well and should be maintained until such time as the Commission is satisfied that local competition is fully developed. Serious consideration of modification or elimination of separation requirements prior to such time is premature.

As to Section VI of the NOPR addressing interexchange rate averaging and rate integration under Section 254(g) of the 1996 Act, the PaPUC believes that there is no need for the Commission to consider the unlikely possibility of state preemption since historic federal and state policies in these areas have been relatively consistent. Furthermore, the Commission should implement Section 254(g) consistent with its clear and unambiguous language which requires rate averaging between rural and urban areas without any express or implied exception. The Commission should reject arguments which try to create exceptions where none exist. Pertaining to the Commission's use of forbearance authority in this area, the PaPUC strongly recommends that the Commission only consider such an exercise of authority if exceptions to Section 254(g) are evaluated on a case-by-case or service offering-by-service offering basis. Broad-based forbearance would create administrative loopholes to Section 254(g) which would be inconsistent with the Congressional intent and the public interest. The rate integration requirement is subject to the similar concerns as are present for rate averaging and should be treated identically by the Commission.

III. DISCUSSION

A. Definition of Relevant Product and Geographic Markets (Section IV).

Historically, as established in its Competitive Carrier proceeding,[1] The Commission has assessed the market power of carriers in the domestic long-distance market by viewing the relevant product as all interstate, domestic interexchange telecommunications services and the relevant market as the United States, including its territories and possessions. The Commission seeks comment regarding whether its historic view should be modified given the Commission's new responsibilities under the 1996 Act and the entry of Bell operating companies (BOCs) into the domestic, long-distance market.

1. The Relevant Product Market

The PaPUC supports the Commission in re-evaluating the relevant product market of all interstate, interexchange service

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[1] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (Competitive Carrier NPRM); First Report and Order, 85 FCC 2d 1 (1980) (First Report and Order); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981) (Competitive Carrier Further NPRM); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (Fourth Report and Order), vacated AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, ___ U.S. ___, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (Fifth Report and Order); Sixth Report and Order, 99 FCC 2d 1020 (1985) (Sixth Report and Order), vacated MCI Telecommunications Corp. v. FCC, 766 F.2d 1186 (D.C. Cir. 1985) (collectively referred to as the Competitive Carrier proceeding).

given the new national policy framework established in the 1996 Act. While the PaPUC agrees that ultimately the entry of BOCs into the domestic, long-distance market will quickly increase consumer competitive choice, the PaPUC would point out that the complete opening of interexchange markets, particularly given the Commission's tentative plans to exercise forbearance authority to detariff non-dominant carriers, may open the door to increased competitive abuses by those carriers which have significant market power. Furthermore, the potential abuses of a given carrier may be isolated in certain markets where the large carriers have a higher market share even though for the domestic, long-distance market as a whole, the carrier's overall market power remains non-dominant in nature.

The PaPUC supports the Commission's tentative conclusion that the U.S. Department of Justice/Federal Trade Commission 1992 Merger Guidelines (Guidelines) are an appropriate measuring tool in determining relevant product markets for the domestic, long-distance industry. As indicated by the Commission, such a standard examines whether a "small but significant and nontransitory" increase in the price of the relevant product will cause enough consumers to switch to a substitute product so as to make the price increase unprofitable. If such a demand transition does not occur, the products should be placed in separate product markets in measuring market power for regulatory purposes. Such an analysis focuses on substitutes for consumer demand as the measure of

whether competitive controls provide adequate consumer protections pertaining to price and quality of service.

The PaPUC agrees that application of the Guidelines is likely to require departure from the Commission's conclusions in Competitive Carrier, citing the Commission's example on page 27, paragraph 46 of the NOPR pertaining to the common sense conclusion that 800 services are clearly not a substitute market for residential MTS services. However, the PaPUC opposes the Commission's tentative approach to essentially presume that products are in the same markets unless a party presents "credible evidence suggesting that there is or could be a lack of competitive performance with respect to a service or group of services." Such an approach is premised on a preference for developing public policy in the context of adversarial litigation -- frequently an inefficient and administratively burdensome process. Furthermore, such an approach is prejudicial to state commissions and state consumer advocates' offices who do not easily have access to the market shares of various carriers in various markets since such information is normally considered highly proprietary.

Furthermore, although the PaPUC opposes the Commission's tentative conclusion to detariff non-dominant carriers, if the Commission implements such an approach, state commissions and consumer advocates will not even have easy access to interstate prices for various services and will be unable, or at least find it extremely difficult, to make the market pricing comparisons or analyses which appear necessary to meet the Commission's proposed

"credible evidence" standard. Accordingly, the Commission's proposal would appear to take away the meaningful ability of state commissions and consumer advocates' offices, who, along with the Commission, are the protectors of consumers who are harmed if market abuses occur.

Instead, the PaPUC recommends a more common sense approach to the development of public policy in determining relevant product markets -- similar to the approach utilized by the Commission in paragraph 46 of the NOPR when it states the obvious fact that 800 services are not substitute services for MTS services under the Guidelines. Such an approach allows the Commission to consider the views of all parties, including the state commissions and consumer advocates' offices, in applying the Guidelines and determining relevant product markets. Of course, such common sense determinations would be fine-tuned or modified through the litigation process over time.

Consistent with this proposed approach, the PaPUC recommends that the Commission accommodate the changing business environment which will result from implementation of the 1996 Act by applying the Guidelines to initially establish three relevant product markets for domestic, long-distance services: 1) the MTS or residential long-distance product market, 2) the WATS/800 product market and 3) the virtual network-type services product market.[2]

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[2]For purposes of these comments, vitual network-type sevices includes all services provided within software defined networks.

As recognized by the Commission, application of the Guidelines and demand substitution factors to MTS or residential long-distance products and WATS/800-type services clearly requires the establishment of two separate product markets. As the Commission states in paragraph 46 of the NOPR, "It appears unlikely, for example, that a substantial number of residential customers would switch from residential service to 800 service in response to a small but significant nontransitory increase in the price of residential service."

The PaPUC suggests that such a demand substitution from MTS to 800 is more than unlikely -- it simply would not occur. In order for such a demand substitution to occur, the rate increase would have to be "monstrous in proportion," not "small but significant." It is unlikely that any single true residential customer would switch from MTS to 800 service as a result of a "small but significant" rate increase.[3] As the Commission implies, application of the Guidelines to residential MTS and WATS/800 services yields an obvious result. Certainly, the Commission does not have to engage in a "credible evidence" approach in order to reach this public policy determination.

Although Guideline application between WATS/800-type services and virtual network-type services yields a less obvious result, the PaPUC believes that the existence of different product markets is clear enough to justify separate product market classification by

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[3] Most residential consumers are unlikely to even notice a "small but significant" rate increase.

the Commission in implementing the 1996 Act. It appears clear to the PaPUC that although both groups of products are subject to the demand of high volume customers, current market pricing levels and technical distinctions justify separation, particularly in the area of data transmission. Given these factors, it is unlikely that virtual network-type services customers, particularly those with large volume data transmission needs, would switch to WATS\800-type services in response to a "small but significant" increase in prices. Again, the PaPUC believes the Commission can reach such a conclusion without engaging in a "credible evidence" approach.

From the PaPUC's perspective, as is also the case pertaining to the relevant geographic market issue, the need to separate products for measuring market power is more critical if the Commission decides to implement its present proposal to detariff non-dominant carriers and conversely,is less important if the Commission maintains non-dominant carrier tariff filing requirements. The determination that a given carrier is non-dominant on a domestic, system-wide basis or in a given product market takes on a whole new level of significance if non-dominant carriers are detariffed, since, under the current requirements, tariffs are the pricing vehicle for regulators to observe and measure pricing and demand trends and to determine if competitive abuses are occurring.[4]

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[4] Consistent with this discussion, the PaPUC sees no compelling reasons why BOCs should be initially subject to a different level of product separation than other carriers since they will be selling essentially the same products to fulfill the same consumer demand. If any such disputes between BOCs and other

2. The Relevant Geographic Market

The PaPUC has similar, although less serious concerns, pertaining to Commission evaluation of the relevant geographic market for purposes of measuring the market power of carriers. The Commission's discussion in paragraphs 49 through 52 pertaining to application of the Guidelines to geographic markets is well reasoned and convincing. However, as pointed out by the Commission, there may be special circumstances which, regardless of application of the Guidelines, warrant separation of geographic markets for purposes of measuring market power given the change in business environment which will result from implementation of the 1996 Act. The PaPUC believes that such special circumstances do exist and should be seriously considered by the Commission.

The PaPUC recommends, particularly if the Commission ultimately detariffs non-dominant carriers, that some ongoing monitoring of pricing and demand trends must be conducted by the Commission on an ongoing basis in order to identify competitive abuses, if and when they occur. It appears to the PaPUC that any monitoring techniques employed by the Commission, whether involving periodic carrier data requests, surveys or other procedures, would yield more credible results if geographic markets are separated for purposes of measuring market power. This is particularly true

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carriers appear to be particularly relevant, it appears that use of a "credible evidence" approach would be appropriate. At the same time, the entry of BOCs provides strong support for Commission departure from Competitive Carrier standards regarding this issue since the effects of BOC market power may be significantly different in the residential MTS, WATS/800 and virtual network-type services product market.

given the likely advent of mega-mergers, like the recently announced intentions of Pacific Telesis Group and SBC Communications. While such a regional mega-carrier may not have an adequate market power to engage in monopolistic pricing under the Guidelines on a nationwide basis, it may have adequate regional market power to engage in monopolistic pricing within a region.

Accordingly, given the likely development of the business environment as a result of implementation of the 1996 Act, the PaPUC recommends that the Commission initially separate geographic markets through the use of either Major Trading Areas (MTAs), Basic Trading Areas (BTAs) or Metropolitan Statistical Areas (MSAs).[5] Such a separation will significantly promote the Commission's ability to monitor carrier activity, potentially increasing administrative benefits and decreasing administrative burdens, as mergers occur and have uncertain but "cause for concern" effects on regional markets.

B. Separation Requirements for Independents and BOC Out-of-Region Services (Section V)

In Section V of the NOPR, the Commission seeks comment on whether any of the historic separation requirements between an independent local carrier and its long-distance affiliate, as subsequently and tentatively adopted by the Commission for BOC affiliates providing out-of-region long-distance services, should be modified or eliminated. As to independents, the separation

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[5] As discussed previously pertaining to relevant product markets, the Commission should not implement a "credible evidence" approach for the same reasons as set forth previously.

requirements, as established in the Competitive Carrier proceeding, provide that if the independent affiliate meets the separation requirements,[6] the independent affiliate will be regulated as a non-dominant carrier. This same approach was tentatively adopted by the Commission for BOC out-of-region affiliates in Bell Operating Company Provision of Out-of-Region Interstate Interexchange Services, CC Docket No. 96-21 (February 14, 1996).

The PaPUC believes that the Commission's approach to the separation requirements issue is sound, well-reasoned public policy. Certainly such separation requirements will continue to provide important and necessary competitive safeguards at least until such time as the Commission is satisfied that local competition is fully developed -- a scenario which, even optimistically, is several years down the road. When local competition becomes fully developed and independents and BOCs are facing even-handed competition from competing carriers and their affiliates which jointly are effectively competing in both local and toll markets, the Commission's separation requirements likely will become unnecessary and should be modified or eliminated, but only at that time.

In its NOPR, the Commission gives no reasons why passage of the 1996 Act could immediately affect the need for modification or

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[6] As established in the Competitive Carrier proceeding, to qualify for non-dominant treatment, the independent affiliate must: (1) maintain separate books of account, (2) not jointly own transmission or switching facilities with its affiliated local carrier and (3) purchase any services from the affiliated local carrier at tariffed rates, terms and conditions.

elimination of the separation requirements. While the 1996 Act clearly promotes and demands the development of local competition and broad based competition in all markets, it is unclear why the Commission should even seriously consider modifying or eliminating the separation requirements at this time. In any case, the PaPUC believes that with the out-of-region entry of BOCs into the long-distance market, the separation requirements are more critical than ever and recommends that the Commission refrain from eliminating, or even modifying, the requirements at this time.

C. Rate Averaging and Integration Requirements (Section VI)

In recognition of the magnitude of the importance of universal service issues as all competitive markets developed, Congress acted in sweeping fashion in the 1996 Act through enactment of Section 254 to place far-reaching protections pertaining to the maintenance of universal service. Such action was not restricted to local services, but included a strong Congressional initiative to assure the maintenance of universal service to interexchange services through a rate averaging requirement and a rate integration requirement. Both requirements are established in Section 254(g) which provides as follows:

> (g) INTEREXCHANGE AND INTERSTATE SERVICES--Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange

> telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

In its NOPR, the Commission seeks comments on the content of the rules required to meet its Congressional mandate.

1. Rate Detariffing

As pointed out by the Commission in the NOPR, the traditional policy of promoting interexchange rate averaging was never a rule of law but was a historic policy implemented by the Commission and state commissions around the country to assure not only universal service but also comparable interexchange rates for all consumers, urban and rural alike. The 1996 Act takes a step further and codifies interexchange rate averaging as a rule of law and an integral component of the new national telecommunications policy framework. The Commission is assigned the responsibility of implementing rate averaging requirements through the promulgation of regulations, which effort is initiated by the NOPR.

In addressing this responsibility in the NOPR, the Commission focuses on two issues: (1) the possibility of preemption of inconsistent state rate averaging policies, and (2) the possibility of Commission forbearance of the implementation of nationwide rate averaging under certain circumstances. The PaPUC will address both of these important issues in these comments.

As to preemption, from the PaPUC's perspective, there is no need for the Commission to address or to accommodate the remote possibility of preemption in this area at this time in developing its rate averaging rules. As the Commission points out, the

legislative history makes it abundantly clear that states are expected to remain a major player in the development and enforcement of intrastate rate averaging policies, as long as they are not inconsistent with the rules ultimately adopted by the Commission.

The traditional national policy in favor of interexchange rate averaging which developed without Congressional oversight prior to enactment of the 1996 Act was a policy historically favored by the Commission and all state commissions. While consistency with the national policy is now required, generally consistent and coordinated interstate and intrastate interexchange rate averaging policies have developed over the years without significant disagreement between regulators. In promulgating the instant rules, the Commission can presume that state intrastate policies will remain consistent with the new rules. If minor adjustments in state policies are required, it can be expected that states will make those adjustments voluntarily without the need for the Commission to attempt to assert preemptive effect of its rules over any given state rate averaging requirements.

For example, in Pennsylvania, similar to the 1996 Act, interexchange rate averaging policy is strongly favored and promoted by statute. Section 3008(d) of the Public Utility Code, 66 Pa. C.S. §3008(d), provides as follows in relevant part:

> . . . Notwithstanding the classification of telecommunications services as competitive, interexchange carriers shall not be permitted to de-average standard message toll service rates unless authorized to do so by the commission.

While the Pennsylvania statute strongly favors statewide, interexchange rate averaging, the statutory provision gives the PaPUC the discretion to address specific situations and circumstances as they occur on a case-by-case basis. The PaPUC believes the rule of law enacted by the Pennsylvania General Assembly is a wise one, and adequately promotes the general rate averaging requirement while still accommodating the need to address special circumstances. As relevant here, the Pennsylvania statutory provision is completely consistent with and in furtherance of the 1996 Act and at the same time allows the PaPUC to make adjustments to its intrastate policies to coordinate with the national policy, if found to be necessary, without any possibility of preemption.

One aspect of Section 254(g) which demands emphasis is that the clear and unambiguous language of the statutory provision requires that the rates charged by carriers be no higher in rural areas than in urban areas, **without exception**. No exception is expressed for high cost local carrier service areas where, for example, access charges may be higher. No language is included in the statute which can reasonably be interpreted to restrict application of the rate averaging requirement to rate charges within and between BOC service territories or within and between independent service territories. The rate averaging requirement is a broad one and a uniform one and cannot be interpreted otherwise.

The Commission can expect that many or most carriers will try to impose exceptions to the rate averaging requirement where none

exist. Such carriers will likely point to the Conference Committee Joint Explanatory Statement which the carriers will claim only maintains the pre-enactment status quo, and codifies exceptions to the rate averaging rule which may have been adopted by the Commission or state commissions on occasion. However, in the PaPUC's view, such arguments are merely an attempt to evade the clear language of the statute. While the Joint Explanatory Statement is ambiguously worded and subject to varying interpretations, the language of Section 254(g) is completely clear and unambiguous and should be closely followed by the Commission. If Congress had wanted to restrict rate averaging to urban and rural areas within low cost service areas or within high cost service areas, it would have expressed such a qualification.[7]

The PaPUC fully acknowledges that carriers will advocate sound and rational economic reasons why the averaging requirement should not be applied, for example, within or between BOC service areas and independent service areas. While varying technology costs may be a significant factor in the overall act of providing interexchange service, from the PaPUC's perspective, the more significant factor is the widely disparate level of access charges assessed by various local carriers throughout the Nation. For example, in Pennsylvania alone, the charge for originating and

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[7] It is clear from review of the 1996 Act in its entirety that Congress knew exactly how to impose or restrict requirements pertaining to service areas since it references the relevance of service areas in many provisions. However, no such reference to service areas is included in the 1996 Act and none should be inferred.

terminating access by an independent local carrier utilizing a NECA-type tariff may be as much as 10 cents per minute above or more than double the originating and terminating access rate charged by Bell Atlantic-Pennsylvania, Inc.

Given this factor, it is completely rational for carriers to attempt to construct exceptions to Section 254(g) to allow them to focus marketing activity and pricing strategies on lower cost areas. This is particularly true in the area of discount programs which, at least in Pennsylvania, have frequently been restricted to calls originating in the BOC territory. However, under the 1996 Act, it is clear that this type of selective marketing, while making complete economic and business sense, is not permitted as a general rule.[8]

Section 254(g)'s rationale underlying the averaging requirement is not to ignore economic reality that due to the nature of technology and disparate access charge levels costs are much higher in certain areas than others, but instead to recognize these economic factors and to prioritize them below the Act's overriding interest in protecting universal service. It is because of and in recognition of divergent costs, not despite divergent costs, that Congress found strong language in Section 254(g) to be necessary.

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[8] Carriers may argue that Section 254(g) does not apply to discount programs or promotion offerings at all. However, such a view would make Section 254(g) meaningless by permitting carriers to evade the Section's clear requirements through rate design and should not be considered seriously by the Commission.

Experience has demonstrated time and again, not only in this industry but in others (e.g., airline industry), that if economics is permitted to govern in this type of scenario, all carriers will focus their pricing attention on low-cost, high demand areas and high cost, low demand areas will be abandoned. It is to protect against this occurrence, in an increasingly competitive, interexchange environment, that Section 254(g) was enacted.

This brings us to the Commission's inquiry as to whether it should exercise its forbearance authority to create exceptions to Section 254(g). In the PaPUC's view, before even seriously considering such an alternative, the Commission must fully acknowledge the legitimate and high priority public policy concern in favor of uniform rate averaging codified into law by Congress little more than two months ago. Certainly, circumstances have not changed in this short period to justify the Commission in immediately diverting from this clear and important Congressional policy.

Commission use of forbearance authority to create permanent exceptions to 254(g)'s general rule will risk the creation of regulatory loopholes which will tempt carriers to segment their markets and, depending on a carrier's market power, exploit elasticity of demand in certain market segments for profit maximization -- all to the benefit of "demand corridor" consumers and to the potentially disastrous detriment of consumers in higher cost/low demand areas. If nothing else, if not immediately threatening to universal service, such a scenario will likely

increase the disparity between the information haves and have-nots pertaining to the transmission of data and information since access to information providers is typically a toll call in rural areas.

This is not to say that there should never be an exception to the general rule. For example, in Pennsylvania the PaPUC has, on occasion, exercised the flexible discretion given to it by the Pennsylvania General Assembly in the interexchange rate averaging area, and permitted deaveraging on a case-by-case basis when it is clear that the specific offering proposed by a carrier is beneficial to some consumers and will have no adverse affect on the pricing or availability of service to other consumers. Accordingly, in evaluating its forbearance option, the Commission should consider a case-by-case or service offering-by-service offering approach to whether exception to Section 254(g) is appropriate. At the same time, the Commission should be careful not to be tempted to exercise forbearance to except categories of service or service offerings on a broad-brush basis. Under such a broad-brush approach, the exception to the general rule would quickly become the general rule resulting in inconsistency with the Congressional intent and the public interest.

A case-by-case approach, if found appropriate by the Commission, could be implemented through the tariff process, if it survives, or through review of application or waiver requests filed with the Commission by carriers believing that service offerings which deaverage rates are justified. Such an approach would reserve the Commission some flexibility while maintaining

compliance with the spirit of the new law. Pertaining specifically to Pennsylvania, such flexibility may be necessary to address issues like extended area service optional calling plans which could be viewed as a form of rate deaveraging.

Although the Commission has not expressly requested comment or enforcement of Section 254(g) and rules promulgated thereunder, the PaPUC believes that the enforcement issue is an important one, deserving of comment at this time. The PaPUC is of the strong opinion that the Commission cannot merely rely on the industry to self-enforce the averaging requirement. Without strong Commission and state commission oversight, widespread abuses will undoubtedly occur and spread and, if allowed to flourish, will become the general rule. Accordingly, the Commission must develop some format for enforcing the averaging requirement. In this regard, it appears to the PaPUC that the continued tariffing of all carriers could be an extremely useful regulatory tool in carrying out the Commission's enforcement responsibility. Without tariffs, the Commission will likely be required to engage in periodic and far-reaching data requests and market evaluation on an ongoing basis. More complex and burdensome monitoring activities may be required to review discount market activities throughout the Nation.

Overall, the PaPUC wonders whether detariffing carriers will actually be administratively efficient or whether such a step, although appearing attractive on its face, will actually increase administrative burdens in the long run. The PaPUC respectfully

requests the Commission to closely evaluate this issue as it moves forward to implement the 1996 Act in this important area.

2. Rate Integration

The PaPUC's views concerning rate integration are virtually identical to its previously stated views regarding rate averaging. From the PaPUC's perspective, the codification of traditional rate integration requirements by Congress through enactment of Section 254(g) is a wise decision and constitutes another important step towards assuring universal service for all Americans.

III. CONCLUSION

The PaPUC appreciates the opportunity to provide comment in this important Docket and asks the Commission to adopt rules consistent with the discussion herein. The PaPUC looks forward to participating in future stages of this proceedings as this Docket moves forward.

Respectfully submitted,

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DATED: April 18, 1996